

ORDINANCE NO. 5506

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CITY OF SANTA BARBARA
FORMING DIVISION
AN ORDINANCE OF THE COUNCIL OF THE CITY
SANTA BARBARA TEMPORARILY SUSPENDING THE
OPENING OR OPERATION OF NEW MEDICAL
MARIJUANA DISPENSARIES OTHERWISE ALLOWED
UNDER SANTA BARBARA MUNICIPAL CODE CHAPTER
28.80 ON AN INTERIM BASIS.

WHEREAS, in 1996, California voters approved Proposition 215, (hereinafter referred to as "The Compassionate Use Act") which Act legalized the limited use of marijuana for medical purposes and allowed persons to grow and possess medicinal marijuana based on the recommendation of a licensed physician; and

WHEREAS, in 2003 the California State Legislature enacted supplemental medical marijuana legislation in order to fully implement the Compassionate Use Act (Senate Bill 420 effective January 1, 2004) which was also intended to clarify the application and scope of the Compassionate Use Act and enhance the access of "qualified patients" and "primary caregivers" to medical marijuana through collective or cooperative group cultivation projects; and

WHEREAS, neither the Compassionate Use Act nor Senate Bill 420 expressly allows medical marijuana dispensaries, particularly those that operate on a "for profit" or retail storefront basis and which, while purporting to operate within the SB 420 definition of a "primary caregiver," actually often only provide marijuana on an over-the-counter or "retail" basis; and

WHEREAS, a proliferation of dispensaries within California has followed the passage of the Compassionate Use Act in 1996 and the enactment of the SB 420 statutes and, in some instances, the spirit and intent of the Compassionate Use Act has apparently been and is being exploited and abused both for profit motivation reasons and for recreational drug abuse by many individuals who improperly obtain marijuana from medical marijuana dispensaries; and

WHEREAS, as pointed out in the Compassionate Use Act Guidelines adopted by the state Attorney General's Office in August 2008, (the California Attorney General's "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical

Use") state law does not specifically or expressly permit Medical Marijuana Dispensaries to operate. According to these Guidelines, the lack of statewide regulations or guidelines has created confusion and hampered the ability of local police and other law enforcement to investigate and prosecute Medical Marijuana Dispensary operators that have been linked to criminal activity, such as selling marijuana for recreational use and distributing marijuana to individuals who re-sell the marijuana to persons who are not qualified patients or primary caregivers under the Compassionate Use Act; and

WHEREAS, in several recent published decisions issued by the courts, such as *People v. Hochanadel* (98 Cal.Rprt.3d 347 - decided in August 2009) and *People v. Mentch* (85 Cal.Rptr.3d 480 - decided in November 2008), the courts of this state have indicated that Medical Marijuana Dispensaries may only be allowed or permitted by the Compassionate Use Act and the SB 420 statutes under very limited circumstances and they have indicated that cities may regulate medical marijuana dispensaries and enforce the Compassionate Use Act using their local police and enforcement powers; and

WHEREAS, Medical Marijuana Dispensaries have been known to operate and advertise in and or close to schools, to unlawfully sell marijuana for profit, to lack the medical expertise and security to be able to properly dispense marijuana, and to regularly sell marijuana to individuals without any of the required legal medical documentation; and

WHEREAS, The Santa Barbara City Council believes that it should immediately evaluate the impacts of Medical Marijuana Dispensaries on its residents, neighborhoods, and on adjacent legally operated businesses; and

WHEREAS, this interim City ordinance is designed to prevent new Medical Marijuana Dispensaries from opening or operating while an inter-departmental staff group, led by the Community Development Department, the Police Department, and the City Attorney's office, meets with the Council Ordinance Committee in public hearings and the Committee crafts a draft ordinance intended to regulate the operation of medical marijuana dispensaries and establish viable regulations for consideration by the full City Council, all in the manner allowed under the Compassionate Use Act and the SB 420 statutes; and

WHEREAS, this interim ordinance gives the City the time it needs to undertake the critically important task of developing a

comprehensive strategy for regulating Medical Marijuana Dispensaries, thus ensuring that this important legislative opportunity is fully examined in depth while not permitting new Medical Marijuana Dispensaries to be established throughout the City;

NOW THEREFORE, THE COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

Section One. Findings for an Interim Zoning Ordinance.

The City Council finds and declares that this interim suspension ordinance is required to address a current and immediate threat to the public peace, health, safety and welfare of the residents of the City for all of the reasons stated in the above-recitals as well as for the following reasons:

1. This ordinance will temporarily limit the opening or operation of new Medical Marijuana Dispensaries and will prevent an insufficiently regulated increase in dispensaries pending the City Council consideration and adoption of a long-term and more comprehensive City ordinance regulating the distribution of medical marijuana within the City. Such an ordinance is likely to be more consistent with the City's General Plan (including the proposed new General Plan being prepared and known as Plan Santa Barbara) and the City's Zoning Ordinance, SBMC Title 28, such that the distribution of medical marijuana within Santa Barbara will be more consistent with the City's zoning regulations and with state law.

2. The City staff recommendation that Santa Barbara have a long-term City ordinance truly reflective of the spirit and intent of the Compassionate Use Act and the SB 420 statutes would probably be substantially undermined if new dispensaries are allowed to open or operate pending the public consideration and City Council review of the proposed long-term City ordinance on medical marijuana.

3. The number of dispensaries operating within the City (both legal and illegal) is apparently increasing (as is the number of new of dispensary applications) and the City Police and City Community Development Departments have received complaints from neighbors, business owners, and concerned citizens regarding the potential negative criminal impacts of some of these dispensaries. Without interim City restrictions on the opening of new dispensaries and on the appropriate location of a dispensary and its hours of operation, the result may be

the establishment of dispensaries in close proximity to sensitive uses operating at all hours.

4. This interim ordinance will prevent an insufficiently regulated increase in the number of new dispensaries and will provide the public and the City Council with the appropriate time it needs to determine if the dispensary model of providing access to Medical Marijuana is allowed by state law and, if so, under what circumstances it is allowed. This interim ordinance will also permit the City to develop appropriate regulations relative to the distances permitted dispensaries should be from sensitive uses, and to determine appropriate methods of operation, as well as the circumstance of when and where dispensaries would be compatible with the surrounding uses, and other related land use issues. As such, it is appropriate that this ordinance be adopted on an urgency basis pursuant to the authority of Government Code section 65858.

Section Two. Interim Prohibition on the Opening or Operation of New Dispensaries.

Pending the consideration and possible enactment of a comprehensive City revision to Santa Barbara Municipal Code Chapter 28.80 for consistency with the Compassionate Use Act and state law (as well as the state Attorney General's Compassionate Use Act Guidelines of August 2008), no medical marijuana dispensary or medical cannabis dispensary which has not received its final City land-use approval pursuant to Santa Barbara Municipal Code Chapter 28.80 and also obtained a City building permit for proposed improvements to the Dispensary location prior to or on November 18, 2009 shall open or operate within the City of Santa Barbara while this ordinance remains in effect.

Section Three. Pending Applications.

Pending the consideration and possible enactment of a comprehensive City revision to Santa Barbara Municipal Code Chapter 28.80 for consistency with the Compassionate Use Act and state law (as well as the state Attorney General's Compassionate Use Act Guidelines of August 2008), the Community Development Department may continue to accept and process applications for a dispensary permit pursuant to Santa Barbara Municipal Code Chapter 28.80 and may determine if such applications are complete (as required by the state Permit Streamlining Act) but shall not submit such applications to the Staff Hearing Officer (or the Planning Commission on an appeal) for review and

approval or disapproval until the enactment of revisions to Chapter 28.80 or this ordinance is otherwise superseded.

Section Four. Effective Period of Ordinance.

This ordinance shall remain in effect pending the effective date of amendments to Santa Barbara Municipal Code Chapter 28.80 or the required expiration date of this interim ordinance (as provided by state Government Code Section 65858) whichever occurs first.

ORDINANCE NO. 5506

STATE OF CALIFORNIA)
)
COUNTY OF SANTA BARBARA) ss.
)
CITY OF SANTA BARBARA)

I HEREBY CERTIFY that the foregoing ordinance was introduced on December 8, 2009, and was adopted by the Council of the City of Santa Barbara at a meeting held on December 15, 2009, by the following roll call vote:

AYES: Councilmembers Iya G. Falcone, Dale Francisco, Grant House, Helene Schneider, Das Williams; Mayor Marty Blum

NOES: None


ABSENT: Councilmember Roger L. Horton

ABSTENTIONS: None

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara on December 16, 2009.


Cynthia M. Rodriguez
Cynthia M. Rodriguez, CMC
City Clerk Services Manager

I HEREBY APPROVE the foregoing ordinance on December 16, 2009.


Marty Blum
Mayor



Agenda Item No. _____

File Code No. 520.04

CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: December 8, 2009

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Medical Marijuana Dispensary Suspension Ordinance

RECOMMENDATION:

That Council introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Temporarily Suspending the Opening or Operation of New Medical Marijuana Dispensaries Otherwise Allowed Under Santa Barbara Municipal Code Chapter 28.80 on an Interim Basis.

DISCUSSION:

Background

On July 28, 2009, the City Council directed the Ordinance Committee to consider possible revisions to the City's Medical Cannabis Dispensary Ordinance, SBMC Chapter 28.80. The Ordinance Committee met several times and took a great deal of public comment and, ultimately, provided direction to City Staff on the significant proposed revisions to the City's Dispensary Ordinance. A draft ordinance containing the proposed revisions has now been forwarded to the Planning Commission for a hearing on their recommendations to the City Council, as required by the state Planning and Zoning Law (Government Code §§65000.)

On November 17, 2009, the City Council also directed the Ordinance Committee to consider further amending the Medical Cannabis Dispensary Ordinance to accomplish the following: 1. to make it more clear that, pursuant to state law (i.e., the Compassionate Use Act), the City only allows the cultivation and distribution of medical marijuana through cooperatives or collectives; and 2. to develop additional City regulations for storefront cooperatives and collectives such that they are required to operate as true collectives/cooperatives in a manner consistent with the state Attorney General August 2008 "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" – hereinafter the "Attorney General Guidelines."

As part of the November 17th action, the City Council also directed staff to return to Council as soon as possible with an ordinance suspending the opening of new medical marijuana dispensaries pending the consideration of these long-term SBMC Chapter

28.80 revisions. As discussed at the time, Staff understood that the Council wished to have this suspension apply to any dispensary which had not been fully permitted and received a final City building permit prior to the Council's November 17, 2009 decision to consider a suspension ordinance.

Approved and Pending Dispensary Applications

This following is a list of City approved, disapproved, and pending dispensary applications.

Approved and Operating:

331 N. Milpas

Approved with Building Permits Issued:

500 N. Milpas (Building Permit issued 10/6/09. Most work is complete, but there are revisions that are currently in plan check)

629 Olive (Building Permit issued 11/18/09)

Approved by Staff Hearing Officer, Pending Appeal at Planning Commission:

741-781 Chapala

302 E. Haley

Pending Applications:

430 Chapala

826 Chapala

234 E. Haley

2915 De la Vina

16 S. La Cumbre

Approved by SHO but Disapproved by Planning Commission:

2 W. Mission

Proposed Suspension Ordinance

As directed by the Council on November 17th, the proposed ordinance suspending City approvals for new Medical Cannabis Dispensaries (attached to this Council Agenda Report) would prohibit the opening or operation of any new medical cannabis dispensary within the City unless the dispensary had received a City permit pursuant to SBMC Chapter 28.80 and had opened for care giving to "qualified patients" on or prior

to November 18, 2009 including those permittees who had obtained a final building permit for any necessary tenant improvements. Thus, the currently permitted dispensary at 331 North Milpas would be allowed to continue in operation. In addition, the "permitted" dispensaries at 500 North Milpas and 629 Olive which have already obtained City building permits would be allowed to open if they chose to do so. Otherwise, under the proposed suspension ordinance, other currently proposed dispensaries would not be allowed to open or operate until the City has finalized its consideration of the long-term revisions to the SBMC Chapter 28.80.

In addition, the draft ordinance contains an optional provision (*Section Three*) which directs the Community Development Department staff to also suspend the processing of pending or new dispensary applications while the Council considers possible revisions to the City's regulations for medical marijuana. However, this provision, would allow potential dispensary operators to continue to apply and to have their application reviewed by CDD staff for completeness. This approach should allow an efficient process for the City to establish priorities among applicants for any particular potential dispensary location based on the date an application was deemed complete. Staff will seek Council direction on whether this optional provision should be included in the final draft of the Ordinance.

As a result, the proposed "suspension" ordinance would not affect approved dispensaries which are duly operating within the City as of November 17th, whether conforming or nonconforming, so long as they are legally permitted and continued to operate in the manner required by SBMC Chapter 28.80. It also would not alter the fact that City staff is pursuing and will continue to pursue code enforcement and possible police enforcement action against those dispensaries which are operating illegally within the City.

Proposed Interim Suspension Ordinance Extension.

As required by the state Planning and Zoning law for "interim" zoning ordinances, the dispensary suspension ordinance will be effective for only 45 days from the date of its adoption – i.e., until the end of January 2010. Since Staff understands that it is the Council's intent to restrict the operation of new dispensaries until after the public, the Planning Commission, and the City Council have had an adequate opportunity to fully discuss and consider revisions to the City medical marijuana regulations (especially with respect to whether storefront dispensaries are consistent the Attorney General's Guidelines and are allowed by state law), staff believes that it will take longer than 45 days to draft and properly consider such revisions. Consequently, staff is planning on the need to return to the Council in January to extend the suspension ordinance for the full ten month and 15 day period allowed by section 65858 of the Government Code. However, if the medical marijuana ordinance revisions are adopted by the Council prior to the one-year suspension, the suspension will be superceded by the City's new revised medical marijuana ordinance.

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Medical Marijuana Dispensary Suspension Ordinance
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PREPARED BY: Danny Kato, Senior Planner

SUBMITTED BY: Paul Casey, Community Development Director
Stephen P. Wiley, City Attorney

APPROVED BY: City Administrator's Office